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14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 *****

17 ALLSTATE INSURANCE COMPANY,
ALLSTATE PROPERTY & CASUALTY
18 INSURANCE COMPANY, ALLSTATE
INDEMNITY COMPANY, and ALLSTATE
19 FIRE & CASUALTY INSURANCE
COMPANY,

20 Plaintiffs,

21 v.

22 RUSSELL J. SHAH, MD, DIPTI R. SHAH,
23 MD, RUSSELL J. SHAH, MD, LTD., DIPTI
R. SHAH, MD, LTD., and RADAR
24 MEDICAL GROUP, LLP dba UNIVERSITY
URGENT CARE, DOES 1-100, and ROES
25 101-200,

26 Defendants.

27 AND RELATED CLAIMS
28

CASE NO. 2:15-cv-01786-APG-CWH

**PROPOSED ORDER DENYING NON-
PARTY HENNESS & HAIGHT'S
MOTION TO QUASH SUBPOENA
SEEKING THE PRODUCTION OF
DOCUMENTS**

1 Presently before the Court is a motion to quash subpoena to produce documents by non-party
2 law firm Henness & Haight (“HH”) filed on April 13, 2018. (ECF No. 275) Plaintiffs filed a
3 response to the motion on April 27, 2018 (ECF No. 281), and HH’s reply was filed on May 4, 2018.
4 (ECF. No. 279)

5 Plaintiffs served HH with a subpoena pursuant to F.R.C.P. 45 for the production of documents
6 regarding communications and payments made by and between HH and the Defendants during HH’s
7 representation of several parties in personal injury claims for which Plaintiffs paid a settlement on
8 behalf of Plaintiffs’ insured. HH objected to the subpoena and moved to quash on grounds that: 1)
9 under F.R.C.P. 26(b)(2)(C) Plaintiffs had ample opportunity to seek the requested information in the
10 in the previous personal injury actions and in this action from the named Defendants; 2) the
11 information requested is duplicative; 3) under F.R.C.P. 45, the subpoena requests protected
12 confidential client information; and 4) the protected information is also a trade secret or confidential
13 commercial communications. HH also argues that the subpoena is deficient pursuant to Local Rule IA
14 11-1(b). Plaintiffs respond that the requested information is proper under F.R.C.P. 26, and that HH’s
15 arguments on duplicity and ample opportunity do not apply. Plaintiffs contend that HH has failed to
16 demonstrate the required showing for protection under trade secret or confidential commercial
17 communications, and that all objections based on confidentiality can be addressed by including HH as
18 a party to the existing protective order. Lastly, Plaintiffs contend that they have substantially
19 complied with Local Rule IA 11-1(b). The Court will address these arguments in order.

20 F.R.C.P. 26 (b)(10) provides that parties “may obtain discovery regarding any nonprivileged
21 matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” The
22 information requested by Plaintiffs is both relevant and proportional to the needs of this case, as it
23 involves claims of RICO violations, misrepresentation and fraud where the amount of claimed
24 damages by all parties is very high. A Court must quash or modify a subpoena that requires disclosure
25 of protected matter, Fed. R. Civ. P. 45(d)(3)(A)(iv); and may quash or modify a subpoena that requires
26 disclosure of commercial information, Fed. R. Civ. P. 45(d)(3)(B)(i). However, courts should also
27 consider other factors in deciding motions to quash or modify a subpoena, including the breadth or
28

1 specificity of the discovery request, and the relevance of the requested information. *See Moon v. SCP*
2 *Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005).

3 **A. Confidential Commercial Information and Trade Secrets**

4 HH claims that the manner in which it communicates with medical providers and negotiates
5 reductions in bills in the “highly competitive industry” of personal injury lawsuits is trade secret
6 and/or confidential commercial information under Rule 45(d)(3)(B)(i). “Confidential commercial
7 information is information which, if disclosed, would cause substantial economic harm to the
8 competitive position of the entity from whom the information was obtained.” *Diamond State Ins. Co.*
9 *v. Rebel Oil Co., Inc.*, 157 F.R.D. 691, 697 (D. Nev. 1994). The person asserting confidentiality has
10 the burden of showing that the privilege applies to a given set of documents. F.R.C.P. 45(d); *see also*
11 *In re Grand Jury Investigation*, 974 F.2d 1068, 1070 (9th Cir.1992). Furthermore, a party must
12 “demonstrate by competent evidence” that the information it is seeking to protect is a trade secret,
13 which would be harmful if disclosed. *Upjohn Co. v. Hygieia Biological Labs.*, 151 F.R.D. 355, 358
14 (E.D. Cal. 1993).

15 HH has failed to meet its burden to provide a particularized showing of exactly how the
16 requested information falls within the confidential commercial communication or trade secret
17 protection. Furthermore, the information requested is not being disclosed to a competitor, and there
18 has been no evidence or argument to support a claim that economic harm would result from the
19 production of the requested information. Therefore, HH’s objection on the grounds of confidential
20 commercial information and trade secret is overruled.

21 **B. Ample Opportunity**

22 Next, HH’s argument that Plaintiffs had ample opportunity to obtain the information in prior
23 lawsuits is unpersuasive. F.R.C.P. 26 (b)(2)(C)(ii) states the Court must limit the extent of discovery
24 where “the party seeking discovery has had ample opportunity to obtain the information by discovery
25 in the action.” The prior litigations to which HH is referring are personal injury actions where
26 Plaintiffs were not a party. Those litigations took place years before this action, and did not involve
27 the claims and causes of action contained in the instant lawsuit. Moreover, some of the requested
28 information comes from claims where no litigation ensued. Plaintiff cannot be said to have had ample

1 opportunity to obtain this discovery pursuant to F.R.C.P. 26 (b)(2)(C)(ii). Therefore, HH's objection
2 on these grounds is overruled.

3 **C. Duplicative Documents**

4 The Court's decision also applies to HH's position that Plaintiffs could have obtained the
5 information directly from Defendants. A party is permitted to obtain documents from a non-party
6 under F.R.C.P. 45, even if the subpoena requests documents that are similar or identical to those
7 previously sought from a party in the action. *See, Diamond State Ins. Co. v. Rebel Oil Co., Inc.*, 157
8 F.R.D. 691, 697 (D. Nev. 1994). While there is the possibility that some of the documents produced
9 might be duplicative, the subpoena is directed towards a non-party that is a separate business entity
10 from the Defendants. It is entirely possible that the files kept by these separate entities may not be
11 identical. Therefore, the objection that the documents requested would be duplicative is overruled.

12 **D. Local Rule 11-1(b)**

13 The Court also finds that Plaintiffs have substantially complied with Local Rule 11-1(b)
14 regarding the notice of association of counsel for attorney Eron Cannon. Mr. Cannon filed his
15 association of counsel on February 16, 2016, which identified the local counsel with whom he was
16 associating. Mr. Cannon is properly admitted to practice in this Court.

17 **E. Confidential Client Information**

18 Lastly, the Court addresses HH's objection that the subpoena requests protected and
19 confidential client information because it discusses client medical treatment. On May 19, 2016,
20 Plaintiffs and Defendants entered into a stipulated confidentiality and protective order relating to the
21 disclosure of confidential and protected information. (ECF No. 38). The order addressed the sensitive
22 nature of medical records and communications under HIPAA, as well as the dissemination of other
23 potentially protected or private information relating to a claimant, such as those indicated in Plaintiff's
24 subpoena, and other identified claimants similarly situated. The stipulated confidentiality and
25 protective order was entered into by Plaintiffs and Defendants only, and was approved by this Court
26 on May 20, 2016. (ECF No. 39). While HH was not an original party to this protective order, the
27 Court finds that extending the protections and scope of the order to HH would address any concerns
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1 regarding the disclosure of confidential or protected information in its Motion to Quash. (ECF No.
2 270).

3 Therefore, IT IS HEREBY ORDERED that the Motion to Quash (EFC No. 270) is DENIED.
4 IT IS FURTHER ORDERED that the confidentiality and protective order approved by the Court and
5 filed on May 20, 2016, (ECF No. 39), and all the safeguards and protections contained therein shall
6 apply to HH and to any documents subject to HIPAA or other confidentiality or privacy concerns
7 produced in response to the subpoena issued by Plaintiffs. HH is hereby ordered to comply with
8 Plaintiffs' subpoena issued pursuant to F.R.C.P. 45 and shall produce the requested information and
9 documentation. HH shall have ten (10) days from the date of this order to comply with the subpoena.

10 IT IS SO ORDERED.

11 DATED this 20 day of June, 2018.

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13 
14 UNITED STATES MAGISTRATE JUDGE
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16 Respectfully submitted:

17 McCORMICK, BARSTOW, SHEPPARD,
18 WAYTE & CARRUTH LLP

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 15th day of June, 2018, a true and correct copy of **PROPOSED**
3 **ORDER DENYING NON-PARTY HENNESS & HAIGHT'S MOTION TO QUASH**
4 **SUBPOENA SEEKING THE PRODUCTION OF DOCUMENTS** was served via the United
5 States District Court CM/ECF system on all parties or persons requiring notice.

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11
12 By /s/ Tricia A. Dorner
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